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January 6, 2004

BY HAND DELIVERY

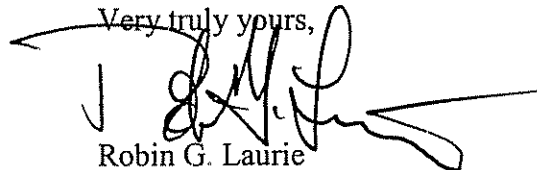
Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104



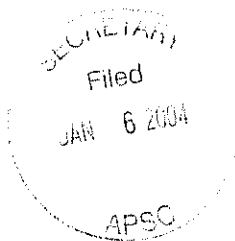
**Re: Proposed Revisions to the Price Regulation and Local Competition Plan;
Docket No. 28590**

Dear Mr. Thomas:

Enclosed for filing is the original and ten copies of the Comments of ITC^DeltaCom Communications, Inc. ("DeltaCom") in the above-referenced matter.

Very truly yours,

Robin G. Laurie

RGL:kp
Enclosures



In Re: Proposed Revisions to the)
Price Regulation and Local Competition) Docket 28590
Plan)

ITC^DeltaCom Communications Inc., d/b/a ITC^DeltaCom and d/b/a Grapevine (“DeltaCom”) pursuant to the Alabama Public Service Commission’s (“Commission”) *Order Seeking Comments* (“Order”) in the above-captioned matter, hereby submits these comments.

I. Introduction and Background.

In its September 22, 2003, Order seeking comments on changes to the price regulations plans for ILEC's, CLEC's and IXC's the staff proposal appears to address a revised plan for ILEC's and does not appear to provide a revised plan for CLEC's or IXC's that covers all the issues that are presently covered by the existing Plan. The Commission also included a proposal by BellSouth and a proposal by the rural ILEC's

1

that was filed earlier at their own initiative and without any procedural guidance from the Commission.

Earlier discussions on these issues, during the first quarter of 2002, including discussions between company representatives and staff at an industry workshop, included proposals by the ILEC's, CLEC's and IXC's for revised regulation to be applied to each category of carrier. These discussions were consistent with the original requirements of the price regulation order that included separate regulatory requirements for ILEC's, IXC's and "New Entrants" (CLEC's). Although there have been some changes in the competitive landscape during the past two years, including BellSouth's entry into the long distance market, BellSouth remains the dominant provider of local services in their territory and the dominant and often monopoly provider of wholesale services to the CLEC industry. These realities require the continuation of asymmetric regulation that ensures the continued development of a competitive market and protects against anticompetitive practices by the incumbent.

Since the Commission staff began its review of these issues and the Commission's current request for comments, the Commission conducted hearings on promotion and win back practices by BellSouth. Those hearings included expert testimony by interested parties, including a recommendation for an industry code of conduct. To date no order has been issued in that proceeding and it is clear that the Commission's decision on those issues is a prerequisite for further consideration of changes to the price regulation plans.

Additionally the Commission has issued a procedural schedule for the Triennial Review Order ("TRO") impairment cases. The outcome of those proceedings could

further alter the competitive circumstances for both ILEC's and CLEC's and should be taken into consideration prior to any major changes in the price regulation plans.

Although DeltaCom is filing specific comments on the proposed changes to the price regulation plans, DeltaCom respectfully requests that the Commission either hold a status conference to be attended by all interested companies for the purpose of discussing the most efficient process for updating the record in the promotions and winback case and to synchronize the review of price regulation with the forthcoming TRO proceedings and/or that the Commission conduct hearings on the Price Regulation Plan Proposals.

II. Appendix A – Staff Proposal

Overall, DeltaCom supports the Staff's proposal as it concerns regulatory oversight of the ILECs with some suggested modifications and/or observations. Although the Proposed Plan is entitled "Streamlined Regulation Plan for Incumbent Local Exchange Carriers Subject to Local Competition, Interexchange Carriers and Competitive Local Exchange Carriers," Part 1.00 substantively addresses ILECs and in a few instances references CLECs. IXC's are not referenced separately at all in the Proposed Plan. It may be that the Proposed Plan is primarily addressing changes to the ILEC portion of the existing Plan.²

DeltaCom has the following recommendations with respect to the Staff Proposal:

- (1). Part 1.00 Paragraph 4 Tariffs- It is unclear to DeltaCom if the Staff proposal is meant to apply the same time frames to both CLECs and ILECs. For example, there is no time frame provided for tariff filings for price reductions or price increases for CLECs. Moreover, to the extent BellSouth raises their recurring or non-recurring rates, DeltaCom as a CLEC and as an IXC is directly impacted and must have a shorter time period for filing tariff revisions in order to modify its rates to its end users accordingly. BellSouth access rates are inputs to

² For example, the existing Plan requires flow through of access charge reductions. Is the Proposed Plan meant to completely replace the existing Plan? It is not clear to DeltaCom if the Proposed Plan does away with access flow through reductions or if the existing Plan requirements remain in effect.

DeltaCom's cost structure. Additionally, with regard to price increases to intrastate Switched Access Services, at least four states in the BellSouth region, other than Alabama, require 30 days advance notice of such changes.³

- (2). Part 1.00 Paragraph 4 Section 7 – As discussed earlier, the Commission conducted hearings on BellSouth's promotions and no order has been issued. Prior to establishing new regulations concerning promotions, the Commission needs to conclude the hearing and issue an order. Specifically, the Commission needs to adopt a Code of Conduct and establish parameters for the offering of promotions such as the length of duration of the promotion. Several state commissions have regulations to prevent anti-competitive conduct such as imputation requirements and/or limits on the length of the promotions themselves.
- (3). Contract Service Arrangements ("CSA") – By definition, a CLEC is competing against the incumbent local exchange carrier and is offering a competitive alternative, and therefore, no approval or filing of a CSA should be required of the CLEC. ILECS should be required to file CSAs with the Commission because of their resale requirements under the Act. This Commission has previously held that a CSA must be made available for resale less the avoided discount.⁴ Additionally the filing of CSA's by the ILEC will allow the Commission staff the on-going opportunity to review these "custom arrangements" to ensure that they are not being utilized to mask anticompetitive off-tariff pricing. This requirement should remain in place as long as certain ILECs retain their dominant status in the provision of wholesale and retail services.

DeltaCom currently offers a statewide flat rated local/long distance bundled service under its "Grapevine" brand for residential customers. The "Grapevine" service provides consumers with an attractively priced, flat rated, state wide calling capability including vertical features. At this time, this service is only available in BellSouth territory, however it could be expanded to other areas if economically feasible UNE and access rates were available. There are also other carriers providing innovative local plans that are responsive to consumer needs. These examples of the benefits of competition will continue and expand if the Commission stays the course of proper regulatory oversight and the economic pricing of interconnection services.

³ Georgia, Kentucky, Mississippi and Tennessee require a thirty (30) filing interval for tariff changes.

⁴ See Docket No. 25677 (rel. Dec. 22, 1997 and Order on Reconsideration rel. April 10, 1998).

III. Appendix B –ICO Proposal

Regarding the ICO Proposal concerning tariff filings for ILECs, DeltaCom does not believe that one (1) working day is sufficient for either Staff or other interested parties to review changes to terms or conditions for Non-Basic services. A more reasonable time period is that proposed by Staff of 10 working days. However, DeltaCom does agree with the ICO Proposal that ILEC price increases for Basic and Switched Access Services are not effective until thirty (30) working days following the file date. Generally, price increases for Basic, Non-Basic, or Access Services should have a thirty (30) day interval prior to becoming effective. Retail end users as well as wholesale customers must have a reasonable opportunity to adjust to a price increase. Clearly if the price increase is as a direct result of a regulatory mandate or other governmental mandate, the ILEC should be permitted to tariff the change in terms or conditions or rates in a shorter time period subject to review and approval of this Commission.

IV. Appendix C – BellSouth Proposal

DeltaCom respectfully submits that BellSouth's proposed plan is the most flawed plan currently under consideration by the Commission. Essentially, BellSouth seeks complete deregulation of its retail local services. BellSouth's plan does not address tariff filing requirements, service quality issues, reporting requirements, and interconnection services among numerous other issues. BellSouth argues that wireless and cable providers have less regulatory scrutiny and are direct competitors to BellSouth. DeltaCom submits that BellSouth's description is incomplete. For example, BellSouth owns Cingular (a wireless competitor in Alabama), and thus, BellSouth losing customers

to Cingular is not exactly a competitive loss. Furthermore, wireline services do have certain advantages over wireless services and wireless is not a substitute for wireline. As for BellSouth's argument that cable providers enjoy some sort of privilege over BellSouth, cable providers that offer local and or long distance services are required to obtain a certificate of public convenience and necessity, file tariffs, and are regulated like any other CLEC or IXC in Alabama. In summary, BellSouth has the vast majority of the local market in Alabama and regulatory oversight is necessary. Specifically, the FCC's last competition report shows that CLECS collectively provided service to only ten (10) percent of the Alabama local market and 84% of those CLEC served lines were either UNEs or resale.⁵

DeltaCom respectfully submits that it would *not* be in the public interest for the Commission to adopt the BellSouth proposed plan. The Commission should apply the overarching regulatory principle that it has used in the past; "regulation should be reduced or withdrawn only when competitive forces are adequate to protect consumers." Due to the overwhelming dominance of BellSouth in both retail and wholesale markets, the Commission can only protect consumers through the continuation of an appropriate regulatory regime.

IV. The DeltaCom Solution

DeltaCom's proposed replacement for the existing Price Regulation Plan addresses ILECs, IXCs, and CLECs and is attached as Exhibit A. DeltaCom's proposal includes a Code of Conduct and includes parameters for the offering of promotions. The

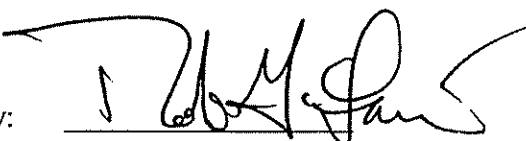
⁵ See Local Telephone Competition Report Tables 7 and 10 (released December 22, 2003 for period ending June 30, 2003).

Code of Conduct provides a necessary bright line standard to prevent anticompetitive behavior.

V. Conclusion

DeltaCom respectfully requests that the Commission review and incorporate the suggested changes outlined in the DeltaCom proposed plan into the Staff proposed plan and/or hold a workshop and hearings regarding the proposed plans.

Respectfully submitted this 6th day of January, 2004.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following individuals in this cause by placing the same in the U.S. Mail, postage prepaid and properly addressed this 6th day of January, 2004.

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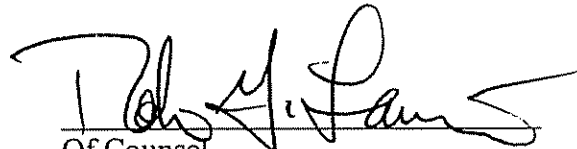

Of Counsel

EXHIBIT A

STREAMLINED REGULATION PLAN FOR INCUMBENT LOCAL EXCHANGE CARRIERS ("ILECs") SUBJECT TO LOCAL COMPETITION, INTEREXCHANGE CARRIERS ("IXCs") AND COMPETITIVE LOCAL EXCHANGE CARRIERS ("CLECs")

PART 1.00 – ILECS

1.01 Applicability

The Streamlined Regulation Plan for ILECs subject to local competition¹ (hereinafter referred to as "the ILEC Plan") will apply to all services offered by ILECs and regulated by the Alabama Public Service Commission (hereinafter referred to as "the Commission"). The suspension of requirements contained in the Telecommunications Act of 1996 (hereafter referred to as "the Act") previously granted by the Commission on October 8, 1996 and subsequently extended till June 2001 has expired.

All ILECs electing to be regulated under the ILEC Plan certify the following.

- A. They will provide non-discriminatory interconnection.
- B. They will make reasonable non-discriminatory provision for collocation.

All ILECs who do not choose to be regulated under this plan will be regulated under rate base, rate of return methodology.

1.02 Definitions and Terms

- A. "Access Services" include Switched Access Services and Local Access Services and are defined as:
 - 1. "Switched Access Services" allow toll providers to interconnect to an ILEC's network in order to originate or terminate interexchange calls and the associated SS7 signaling used to complete these calls.
 - 2. "Local Access Services" allow CLECs to complete local telecommunication services via an ILEC's network through the interconnection of a CLEC's network to an ILEC's network, through the resale by a CLEC of an ILEC's regulated retail services, or through the purchase of unbundled network elements ("UNEs") and the associated SS7 signaling associated with these calls.

¹ See definition at Part 1.02F

- B. The anniversary date is the annual reoccurrence of the date shown on the Commission Order for implementing the terms and conditions contained herein.
- C. "Basic Services" consist of existing traditional flat-rate basic local exchange services for residence customers (e.g., 1FRs), including Lifeline Service.
- D. "Effective Date" is the date on which a new tariff, tariff revision, or promotion is considered valid and effective. The Effective Date is based on a specified number of working days following, but excluding, the File Date.
- E. "File date" is the official date recorded by the office of the Director of the Commission's Administrative Division (Commission Secretary) for any proposed tariff, tariff revision, or promotion submitted by a telecommunications provider and accepted by the Commission. The File Date is considered administrative in nature.
- F. "ILECs subject to local competition" are those incumbent local exchange companies who have requested and are approved by the Commission to be regulated in accordance with the provisions of the plan contained herein, and have agreed to submit to the Commission for such review or approval as may be required by the Commission, prices for unbundled network elements (UNEs), a proposed resale discount rate, and an available proposed interconnection agreement no later than eighteen (18) months from the date of this Order.
- G. "Non-Basic Services" are all other services, which are not categorized as Basic or Access Services to include nonrecurring charges for all services. A new regulated service, function, feature, capability, or any combination thereof, which is not offered by an ILEC as of the effective date of the ILEC Plan, shall be classified as a Non-Basic Service.
- H. "Presumptively (or presumed) valid" means that the Commission presumes that a tariff, tariff revision, or promotion fully complies with the provisions and terms of the ILEC Plan as specified herein and is valid and effective on the proposed Effective Date.
- I. The Service Price Index (SPI) is a cumulative measure of price changes. The SPI Report is used to track the aggregate change in revenue for a Non-Basic Services subcategory and to determine whether price increases for individual services in the Non-Basic Category are authorized in accordance with the constraints set forth in this plan for Non-Basic Services pricing.
- J. "Suspend(ed) or suspension" is a postponement of the proposed Effective Date of a tariff, or promotion by action of the Commission. The new proposed Effective Date for a suspended tariff, or promotion is derived by adding the number of working days specified by the Commission for the suspension to the initial proposed Effective Date. Day one of a suspension period begins on the succeeding working day following the initial proposed Effective Date. Suspensions may be reduced by action of the Commission.
- K. "Working Days" shall mean Monday through Friday, excluding Christmas Day, Independence Day, Labor Day, Memorial Day, New Years Day, Thanksgiving Day, and

Veteran's Day to the extent such days fall between Monday and Friday and to the extent such holidays are an official holiday recognized by the State of Alabama. "Working Days" shall also exclude the day before and the day after Independence Day, New Years Day, Christmas Day, and Thanksgiving Day to the extent that such days fall between Monday and Friday and to the extent that such days are authorized by the Governor as official holidays for Alabama State Employees.

1.03 Service Categories

Each telecommunications service offered by an ILEC and regulated by the Commission will be classified into one of the following three service categories: Basic, Access, or Non-Basic.

1.04 Tariffs, Promotions, and Contract Service Arrangements ("CSAs")

A. Tariffs

1. An ILEC shall file tariffs for all telecommunications services offered by the ILEC and regulated by the Commission. Tariffs shall be filed for any proposed change to terms and/or conditions or prices.
2. Terms and Conditions
 - (a) Changes to terms or conditions for Basic and Switched Access Services shall be presumed valid and filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.²
 - (b) Changes to terms or conditions for Non-Basic Services³ shall be presumed valid and filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.
3. Price Reductions
 - (a) Price reductions⁴ for telecommunications services offered by an ILEC and regulated by the Commission shall be presumed valid and filed with a

² May be suspended by the Commission for a period of up to thirty (30) working days from the proposed effective date whereupon the tariff shall be allowed to become effective, as filed, pending additional investigation by the Commission. The Commission may enter a decision to modify or disapprove the tariff filing thereafter but must do so within sixty (60) working days following the proposed effective date of said tariffs. Otherwise, the filing shall become effective on a continuing basis on the 60th day.

³ Unless the Commission disapproves the tariff, it shall on an interim basis, be allowed to become effective on the proposed effective date pending additional investigation by the Commission. The Commission may subsequently enter a decision to modify or disapprove the tariff filing thereafter but must do so within sixty (60) working days following the proposed effective date of said tariffs. Otherwise, the filing shall become effective on a continuing basis on the 60th day. The Commission will not suspend these tariffs. However, should the Commission subsequently modify or disapprove the tariff filing, the ILEC will, within 30 calendar days from the Commission Order modifying or disapproving the tariff, refund to affected customers the over payments received as a result of the interim price changes.

⁴ See footnote 4.

proposed Effective Date no earlier than ten (10) working days following the File Date.

4. Price Increases

- (a) Price increases for Basic, Non-Basic, and Switched Access Services⁵ shall be presumed valid and filed with a proposed Effective Date no earlier than thirty (30) working days following the File Date.

5. New Services

- (a) Tariffs for new telecommunications services⁶ shall be filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.

6. Grandfathering/Obsoleting and Eliminating Services

- (a) Tariffs that grandfather/obsolete and/or eliminate telecommunications services shall be presumed valid and filed with a proposed effective date no earlier than ten (10) working days following the file date⁷.

⁵ See footnote 3.

⁶ See footnote 4.

⁷ See footnote 3.

Promotional Rates for Incumbent Local Exchange Company Services.

1. Definitions

- (a) **'Promotion'** – Service(s) regulated by the Alabama Public Service Commission and included in the carrier's tariff on file with the Commission, offered during a specified *marketing period* to *eligible subscribers* at a special price and/or in a special combination for a limited *promotional period*.
- (b) **'Eligible Subscribers'** – *Existing* and/or *prospective subscribers* who meet the *eligibility criteria* to qualify for the promotion.
- (c) **'Existing Subscribers'** – Customers subscribing to the carrier's services (excluding those provided service through a CLEC) as of the effective date identified in the promotion.
- (d) **'Prospective Subscribers'** – All potential customers, not existing subscribers, without reference to their former or current service provider.
- (e) **'Eligibility Criteria'** - Services to which existing customers are currently subscribed or to which existing and/or prospective customers must subscribe, further defined by volume, usage, and/or term characteristics as necessary.
- (f) **'Marketing Period'** – The term during which the promotion is marketed to eligible subscribers.
- (g) **'Promotional Period'** – The temporary term during which the promotional price and/or combination of services is provided to the subscriber.
- (h) **'Essentially Similar Promotion'** – As determined by the Commission, a promotion constructed in such a manner that it approximates the eligibility criteria of an earlier promotion approved for the carrier.
- (i) **'Short-term Promotion'** – A promotion with a promotional period for 90 days or less.
- (j) **'Long-term Promotion'** – A promotion with a promotional period of greater than 90 days.
- (k) **'Price Floor'** – The minimum price that can be offered for a service or services through a promotion.
- (l) **'File Date'** – The date that the promotion is filed with the Commission Secretary as indicated by the date stamp affixed by the Secretary's office.
- (m) **'Effective Date'** – Midnight, five (5) *working days* after (and excluding) the file date.
- (n) **'Working Day'** – Weekdays excluding official State holidays and such other days designated by the Governor as a holiday for State employees.
- (o) **'Resale Eligibility'** – the terms, conditions, and price for which an ILEC promotion is available to CLECs for resale.
- (p) **'Marketing Trial' or 'Technical Trial'** – A temporary offering of proposed but yet untariffed services and/or new technology in a limited geographical area for purposes of determining customer interest and/or to identify and resolve technical issues associated with providing the service.

2. Application

- (a) The promotional period will not exceed twenty-four (24) months and is non-renewable.
- (b) Essentially similar long-term promotions shall not be approved within twelve (12) months from the final day of the marketing period for an identical or essentially similar promotion. Essentially similar short-term promotions shall not be approved within six (6) months from the final day of the marketing period for an identical or essentially similar promotion.
- (c) Reductions in or waiver of non-recurring charges will be filed as short-term promotions, limited to marketing periods of 90 days or less and will be considered to have a promotional period of 90 days or less.
- (d) Short-term promotions shall be made available for resale by the ILEC at the promotion price and long-term promotions made available for resale by the ILEC at the promotion price less the approved wholesale discount.
- (e) The price floor for a promotion will consist of the ILEC's total zone 1, unbundled network element (UNE) prices for the elements that a CLEC without facilities would be required to obtain from the ILEC in order to provide the service.
 - (i) If UNEs are not established by the ILEC for any service(s) or required elements that comprise the service(s), the retail price less the wholesale discount will be used as the proxy for the UNE price for those elements or services.
 - (ii) Promotions for reductions in or waiver of non-recurring charges are not subject to the price floor.
- (f) Long-term and short-term promotions shall not be combined in the same filing to the Commission but must be filed separately.
- (g) Unregulated services and/or 'bonus point' programs will not be included in any promotion filed with the Commission.
- (h) The following minimum supporting documentation to be filed with all promotions.
 - (i) A detailed description of the promotion.
 - (ii) The eligible subscribers.
 - (iii) The eligibility criteria.
 - (iv) The marketing period (beginning and ending date).
 - (v) The promotional period (beginning and ending date).
 - (vi) The services included in promotion with a tariff reference (section, page and paragraph) and their retail price.
 - (vii) The zone 1 UNEs required to provision the service(s) [see 2(e), above] with an associated UNE price for each.
 - (viii) The promotional price for each service.
 - (ix) The total retail, UNE, and promotional price.
 - (x) The resale eligibility.

- (xi) The estimated financial impact of the promotion.
- (xii) A point of contact, telephone number and email address for responding to Commission staff inquiries concerning the promotion and supporting documentation.

- (i) The Commission will suspend or disapprove any filing that fails to fully comply with the requirements for supporting documentation [2(h), above].
- (j) The rules in 2(a) through 2(i) apply to all ILECs in a competitive local market with established UNE prices **and to ALL CLECs** [excluding 2(d) and 2(h)(x)].

3. Restrictions

Beginning with the date that a CLEC submits a local service request (LSR) to an ILEC until 30 calendar days following the date in which the CLEC is provided the requested service, the customer for whom the service is requested is not eligible for an ILEC promotion or contract service arrangement (CSA).

4. Exemptions

(a) 'Marketing Trials' or 'Technical Trials' shall conform to the following.

- (i) Trials will be limited to promotional periods of 6 months or less.
- (ii) Trials will be limited to marketing periods of 3 months or less.
- (iii) Trials will be limited to customers served by the wire center(s) in one pre-selected Metropolitan Statistical Area (MSA) for the ILEC serving area wherein the trial is marketed. MSAs will be limited to those defined by the U.S. Census Bureau.
- (iv) Carriers will document that the service is provided at a price that is greater than or equal to cost using TSLRIC.
- (v) Trials must be approved by the Commission and will have an effective date of fifteen (15) working days from the file date.
- (vi) Resale is available only in accordance with the limiting criteria in 4(a)(i) through 4(a)(iii) above.

Trials are non-renewable unless specifically approved by the Commission.

A. Contract Service Arrangements (CSAs)

1. Customer-specific contract service arrangements⁸ ("CSAs") may be offered by an ILEC to customers for any product or service provided by an ILEC and regulated by the Commission, provided there is a competitive alternative for the customer. If no competitive alternative exists, CSAs may be offered on a case-by-case basis, subject to Commission approval and the tariff filing requirements for "Changes to Terms and Conditions" in the appropriate service category (i.e. Basic, Switched Access or Non Basic Services, Section 1.04A2).

⁸ See footnote 4.

- (a) Rates, terms and conditions, and additional regulations, if applicable, for the CSA will be developed on an individual case basis and will include all relevant costs, plus an appropriate level of contribution. Unless otherwise specified, regulations applicable to a CSA are in addition to the applicable rates and regulations specified in an ILEC's tariffs.
- (b) After acceptance of the CSA by the customer, the ILEC will furnish a copy of the accepted proposal and appropriate support documentation to the Commission's Telecommunications Division at least ten (10) working days prior to implementation. CSAs shall be presumed valid by the Commission.

D. Supporting Documentation

1. The ILEC will provide supporting documentation with each price change filing when necessary to demonstrate that the price change complies with the pricing rules in Section 1.05.

E. Tariffs Disposition (Summary):

Purpose	Proposed Effective Date (working days)	Authorized Suspension from Effective Date (working days)	Effective on a Continuing Basis (working days from Effective Date)
Changes to Terms and Conditions (Basic and Switched Access Services)	10	30	60
Changes to Terms and Conditions (Non Basic Services)	10	NA	60
Price Reductions	10	NA	60
Price Increases (Basic and Switched Access Services)	30	30	60
Price Increases (Non Basic Services)	30	NA	60
Add New Services	10	NA	60
Grandfather, Obsolete, Eliminate Services	10	30	60
Promotions ⁹	Per PSC Order	Per PSC Order	Per PSC Order
Contract Service Arrangements	10	NA	60

1.05 Pricing Rules

A. General

1. Existing prices are assumed valid and compliant upon the effective date of this Plan.
2. For new services, or in the event of a price reduction for existing services (excluding 1FR Service), the price shall equal or exceed the ILEC's Total Service Long-Run Incremental Cost ("TSLRIC") for the service or the equivalent UNE composite rate whichever is higher.

⁹ Rules on promotions contained herein are subordinate to any subsequent rules adopted by the Commission (Re: BellSouth's Full Circle Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions; BellSouth Key Customer Promotion Docket Nos. 15957, 27989, and 28126).

3. Prices for non- BellSouth/ ILECs which have not yet developed UNE prices, or which subsequently adopt BellSouth or UNE prices, shall be considered presumptively compliant if at or above prices for comparable services for BellSouth.
4. Non-BellSouth ILECs who submit cost studies in support of UNE prices, other than those in effect for BellSouth, will, as required, provide TSLRIC studies to support price floors for individual services.
5. On a case-by-case basis, an individual service may, with Commission approval, be priced below TSLRIC based on public interest concerns. In addition, the ILEC may, upon Commission approval, price a service below TSLRIC and/or UNE prices in order to meet the equally low price of a competitor.

B. Basic Services Category Pricing Rules

DeltaCom supports this section of the Staff Proposal.

C. Access Services Category Pricing Rules

1. ILECs shall establish prices for intrastate switched access services that are no higher than their current local interconnection rates. In addition, special access rates shall be established based on equivalent UNE costs. Beginning on the effective date of these rules, the ILECs shall reduce by one-third the difference between current switched access rates and current interconnections rates. On the first and second anniversaries of the effective date of these rules the ILECs will again reduce that difference by one-third so that by the end of two years intrastate switched access rates are equal to local interconnection rates. Special access rates shall be similarly reduced to reflect their equivalent UNE costs.
2. The terms and prices for UNEs, local interconnection and resale will be formally reviewed and appropriately adjusted as determined by the Commission and in accordance with the Telecom Act.

D. Non-Basic Services Pricing Rules

DeltaCom supports this section of the Staff Proposal.

Miscellaneous Provisions

DeltaCom supports the Staff's Proposal Section 6 entitled "Miscellaneous Provisions" and recommends the addition of the following:

Code of Conduct

1. No incumbent local exchange company shall give its competitive local exchange affiliate or division preferential treatment in the provision of goods and services.
2. No incumbent local exchange company shall provide any goods or services to its competitive local exchange affiliate or division below cost or market price, nor shall the company purchase goods or services from the competitive affiliate or division at a price above market, and no transaction between the two entities shall involve an anti-competitive cross-subsidy.
3. The incumbent local exchange company shall simultaneously make available to any competitor any market information not in the public domain that is supplied to any competitive local exchange affiliate or division.
4. Employees or agents of an incumbent local exchange company, who are responsible for the processing of an order or service of the operating system, shall not be shared with the competitive local exchange affiliate or division, and shall have offices physically separated. The competitive affiliate or division shall have its own direct line of management, and any shared facilities shall be fully and transparently allocated between the incumbent local exchange company and its competitive local exchange company affiliate or division.
5. No employee or agent of an incumbent local exchange company shall promote any service of its competitive local exchange affiliate or division.
6. No employee or agent of an incumbent local exchange company shall represent that any repair or restoration of service would have occurred earlier if the customer had obtained service from its competitive local exchange affiliate or division.
7. No incumbent local exchange company shall condition the provision of any regulated service on the purchase of service from its competitive local exchange affiliate or division.
8. No incumbent local exchange company may represent that the services provided by its competitive local exchange affiliate or division are superior, the services of other competitors are not reliable, or, that the continuation of certain services from the

incumbent local exchange company are contingent upon purchase of the full range of services from its competitive local exchange affiliate or division.

9. Any incumbent local exchange company that bundles its services must provide the same opportunity at the same terms to competitors.

10. Any party allegedly harmed by a violation of any of these Code of Conduct provisions may invoke the Commission's alternative dispute resolution procedures to resolve the dispute.

APPENDIX A

DeltaCom Supports Staff Proposal Appendix A in its entirety

PART 2.00 CLECs

REQUIREMENTS FOR NEW ENTRANTS

1. All new local service providers must apply for and receive a certificate from the Commission prior to providing any local exchange services.
2. To create an environment in which fair and effective local competition flourishes, regulatory requirements for new entrants will initially be kept to a minimum in order to prevent unnecessary barriers to effective competition. Nevertheless, the Commission believes that certain requirements are necessary to safeguard the public interests.
3. New entrants must demonstrate that they possess the technical, managerial, and financial resources to provide local exchange service before the Commission considers the issuance of a certificate.
4. New entrants must provide access to and interconnection with their facilities at just and reasonable rates.
5. New entrants must comply with all Commission service quality standards applicable to CLECs and shall submit any service quality reports and allow any access to facilities required by the Commission.
6. New entrants must provide access to: emergency services, the Relay Center for the Hearing Impaired, and operator/directory assistance services.
7. New entrants must, during normal business hours (at a minimum), provide knowledgeable personnel to respond to customer service and billing inquiries.
8. New entrants must, at a reasonable cost, provide customers with a local exchange telephone directory.
9. New local service providers shall file tariffs for local exchange and exchange access services. All tariffs, including but not limited to increases, decreases, new services, terms and conditions, and promotions, will be presumed to be valid and shall be effective one (1) day after filing.
10. New local service providers may offer service and market trials prior to filing local service tariffs.

11. Additionally, on or before April 1 of each year, new entrants shall file with the APSC a copy of their Annual Report to Shareholders and the Form 10-K filed with the Securities Exchange Commission. Companies not preparing these reports shall file financial statements containing comparable information.

12. Further, the Commission reserves the right to modify and expand the regulatory requirements for new entrants.

PART 3.00 IXC AND RESELLER STREAMLINED REGULATION PLAN

1. All interexchange carriers and resellers shall continue to file tariff revisions with the Commission. All tariff filings are presumptively valid and shall be effective one (1) day after filing.

2. All interexchange carriers and resellers may offer service and market trials prior to filing new service introductions.

3. Interexchange carrier and reseller rates charged for all services shall continue to be compensatory (i.e., each service must recover total access charges plus billing and collection costs on that service).

4. All interexchange carrier and reseller services shall be available for sale. This should not include billing and collection services on behalf of 3rd parties.

5. No interexchange carrier or reseller shall be relieved of its obligation to pay for access services used.

6. No interexchange carrier or reseller shall be relieved of its obligation to comply with any legislative mandate implemented by the Commission regarding revisions to toll rates and services.

7. There shall be no modification to any interexchange carrier's or reseller's certificate of authority without prior approval of the Commission.

PART 4.00 Commission Oversight

A1. Customer Complaint Resolution –

The Commission's existing customer complaint procedures remain in full force and effect.

B2. Commission Authority –

Nothing in this plan shall be construed as an abrogation of the Commission's statutory authority or the ongoing statutory obligation of ILECs/CLECs to provide financial cost or other related data as required by the Commission. The Commission specifically retains the authority to extend, modify or repeal all or a portion of this order, and reserves the right to take such steps as are deemed necessary to ensure compliance with the requirements and objectives of this Order.

C3. Commission Review –

This Plan shall supercede the Commission's Report and Order dated September 20, 1995 and all amendments thereto and shall remain effective unless and until there is a determination to the contrary by the Commission. The Commission will conduct Triennial assessments of the Plan beginning with the second anniversary date of the Plan. Said assessment will be conducted through the solicitation of comments from all interested parties including the office of the Attorney General of Alabama. Each such Triennial assessment must be completed within six (6) months of the applicable anniversary date.